

B-28



In the Matter of Johanna Rios,
Newark School District

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-861

Layoff Rights Appeal

ISSUED: JUN - 4 2015 (CSM)

Johanna Rios, a Community Aide Schools, Bilingual in Spanish and English, with the Newark School District (NSD), represented by Colin M. Lynch, Esq., appeals the attached determination of her layoff rights by the Division of Classification and Personnel Management (CPM).¹

By way of background, the NSD submitted a layoff plan to CPM to lay off employees in the NSD on August 15, 2014. The plan was approved and notices were required to be sent to the affected employees. A 45 day Notice of Layoff was sent as required to those employees whose positions were targeted for layoff. General 45 day Notices of Layoff were posted as required. The plan indicates that a meeting was held with union representatives on May 16, 2014. On August 1, 2014, CPM issued letters to the affected employees advising them of their layoff rights.

A review of official records indicates that the appellant's position as a Community Aide Schools, Bilingual in Spanish and English, was targeted. CPM determined that there were no lateral or demotional title rights available for her.

On appeal, the appellant states that the layoff determination letter incorrectly indicates her title is Community Aide Schools, Bilingual in Spanish and English. The appellant provides copies of her paystubs which indicate that her position is "Teacher Aide, 6 Hours." In a supplemental submission, the appellant states that she has greater seniority than Martha Abraham, Carmen Duran, Xiormara Gonzalez, Providencia Ortega, Maria Pinto, and Lawanda Ports who were

¹ Now known as the Division of Agency Services.

all in the title "Parent Liaison," that were hired after her but were not impacted by the layoff. Further, she claims that these individuals were offered lateral displacement rights to avoid layoff and that the appointing authority changed the titles of these employees from Community Aide/Parent Liaison to Teacher Aide in September 2014 following layoff. Therefore, the appellant maintains that she has greater seniority than other individuals not subject to layoff and that she was not afforded the proper lateral and/or demotional rights.

It is also noted that the appeal of the good faith of appellant's layoff is pending at the Office of Administrative Law (OAL).

According to agency records, the appellant was appointed as a Community Aide Schools, Bilingual in Spanish and English on January 4, 2000. Further, Abraham was appointed as a Community Aide Schools/Teacher Aide on September 4, 2001 and she exercised lateral title rights as a result of the layoff to Teacher Aide effective August 15, 2014. Duran was appointed as a Teacher Aide on February 14, 2000. Gonzalez was appointed as a Teacher Aide on September 7, 2004, was laid off from that title on June 30, 2011, and exercised special reemployment rights to the title Community Aide Schools on September 1, 2011. Gonzalez was then advanced to Teacher Aide on September 3, 2013 and was laid off from that title on August 15, 2014. Ortega was appointed as a Teacher Aide on January 4, 2000. Pinto was appointed as a Community Aide Schools/Teacher Aide on January 5, 2000 and exercised lateral title rights to Teacher Aide on August 15, 2014. Ports-Hughes was appointed as a Teacher Aide on December 17, 2001.

CONCLUSION

In an appeal of this nature, it must be determined whether CPM properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. It is an appellant's burden to provide evidence of misapplication of these regulatory criteria in determining layoff rights and the appellant must specify a remedy. Therefore, the only issues to be discussed in this proceeding are layoff rights issues.

Pursuant to *N.J.A.C. 4A:8-2.6(a)2*, a determination of rights appeal is based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly. It is noted that the determination of lateral and demotional rights is based on a comparative analysis of Civil Service Commission (Commission) job specifications and application of *N.J.A.C. 4A:8-2.1(a)* and (b). *N.J.A.C. 4A:8-2.1(a)* defines a lateral title right as the right of a permanent employee to exercise displacement rights against an employee in the layoff unit holding a title determined to be the same or comparable to the employee's affected title. Title comparability is determined by the Commission based on the following four factors:

1. The title(s) shall have substantially similar duties and responsibilities and, in State service, the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

N.J.A.C. 4A:8-2.1(b) defines a demotional title right as the right of a permanent employee to exercise displacement rights against an employee in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. The Commission determines demotional title rights on the basis of the following criteria:

1. The title(s) shall have lower but substantially similar duties and responsibilities and, in State service, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;
3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

Moreover, it is noted that the current system for determining title rights was the result of agency policy to automate the determinations consistent with the aforementioned criteria. This policy, which arose out of State layoffs in 1995, was upheld by the former Commissioner of Personnel on appeal and reconsideration and affirmed by the Appellate Division, Superior Court. *See In the Matter of State Layoff Rights* (Commissioner of Personnel, decided July 7, 1995), *recon. denied*, (Commissioner of Personnel, decided May 24, 1996), *aff'd*, Docket No. A-5847-95T3 (App. Div., December 9, 1997). *See also, In the Matter of Emily Graham-Weber*

(Commissioner of Personnel, decided June 30, 2000), *aff'd*, Docket No. A-6681-99T5 (App. Div., December 4, 2001).

In *Graham-Weber, supra*, the Appellate Division observed that, because of the above-described system for determining demotional title rights, "an employee with far less seniority may displace another individual when the displacing individual is in a title with duties and responsibilities that are higher but substantially similar to the displaced employee's title." Thus, as the court rightly noted, "a particular individual's qualifications, the functions currently performed by any one individual, and even an individual's special abilities to perform other jobs are not a factor in the Department of Personnel's [now Civil Service Commission] comparative analysis to determine title rights. Rather, the agency focuses only upon a comparison of the responsibilities and duties of the affected title and other designated positions."

Regarding lateral and demotional title rights, the right to displacement, laterally or demotionally, is based on the system of title rights currently in use for local service which, as noted above, applies various criteria in determining title rights. More fundamentally, as is the case in this situation, lateral and demotional title rights cannot be given if there are no opportunities available.

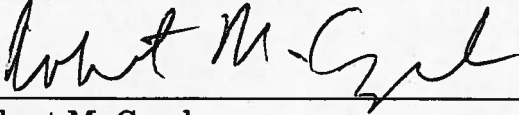
In the present matter, the appellant's layoff rights were correctly determined based on her permanent title. Initially, it is noted that the appellant asserts that she was hired as a "Teacher's Aide 6 Months." However, a review of the appointment information contained on the new hire form submitted by the appointing authority indicates that it requested she be appointed to Community Aide Schools, Bilingual in Spanish and English, which is title code 06261. Additionally, the title of "Teacher's Aide 6 Months" is not a Civil Service title. In accordance with the above noted rationale for determining title rights, the Community Aide Schools, Bilingual in Spanish and English title does not have lateral or demotional rights to the titles of Teacher Aide or Community Aide Schools/Teacher Aide. Thus, although appellant may have had more seniority than other employees, she was only entitled to displace another employee if the employee is serving in a title to which the appellant had rights. *See In the Matter of Kenneth Poole* (CSC, decided April 29, 2009). Therefore, since the appellant's title does not have rights to any of the titles of the individuals she names, her layoff rights were properly determined.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF JUNE, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, NJ 08625-0312

Attachment

c: Johanna Rios
Colin M. Lynch, Esq.
Vanessa Rodriguez
Kenneth Connolly
Joseph Gambino



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P.O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

August 1, 2014

Johanna Rios
17 Elliott Street
2nd Floor
Newark, N.J. 07114

Re: Layoff from your permanent position of Community Aide Schools, Bilingual Spanish and English, Newark School District, effective close of business of August 15, 2014

Dear Ms. Rios:

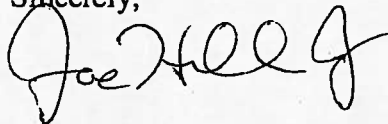
In accordance with the provisions of N.J.S.A. 11A:8-1 et seq., your layoff from the title of Community Aide Schools, Bilingual Spanish and English has been recorded. The New Jersey Civil Service Commission has determined there are no displacement rights that can be afforded to you. As a result, your employment will be terminated effective close of business August 15, 2014 and your name will be placed on the Special Reemployment List for your current permanent title and for other titles that may be deemed appropriate.

Special Reemployment Lists will be certified, subsequent to the effective date of layoff, against employees serving on a provisional basis. If there are no such employees, your name will remain on the Special Reemployment List(s) for certification against future vacancies or provisional employees. Please note, it is the responsibility of each employee whose name is placed on a Special Reemployment List to advise the Civil Service Commission of any present or future change of name or address. Failure to do so may result in not receiving a future employment opportunity or possible removal from the list.

You may appeal whether the Appointing Authority acted in good faith in instituting this layoff plan. The burden of proof in such appeals is on the part of the appellant. Such appeals must specify the grounds of your appeal and must be received within twenty (20) days of your receipt of this notice. Please be advised, pursuant to P.L. 2010 C.26, effective July 1, 2010 there shall be a \$20 fee for good faith layoff appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to NJ CSC. Persons receiving public assistance pursuant to P.L.1947, c.156 (C.44:8-107 et seq.), P.L.1973, c.256 (C.44:7-85 et seq.), or P.L.1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from this appeals fee. Good faith appeals should be addressed to the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, Unit H, P.O. Box 312, Trenton, New Jersey 08625-0312.

You may also appeal the determination of your layoff rights or seniority. The burden of proof in such appeals is on the part of the appellant. Such appeals must specify the grounds of your appeal and must be received within twenty (20) days of your receipt of this letter. These appeals should be addressed to the New Jersey Civil Service Commission, Division of Appeals and Regulatory Affairs, Written Records Appeals Unit, P.O. Box 312, Trenton, New Jersey 08625-0312. No fee is required for layoff rights or seniority appeals.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Hill, Jr.", with a stylized flourish at the end.

Joe Hill, Jr., Assistant Director
Classification and Personnel Management

C: Vanessa Rodriguez, Appointing Authority